

1 WRIGHT, L'ESTRANGE & ERGASTOLO

2 John H. L'Estrange, Jr. (SBN 049594)

3 jlestrange@wlelaw.com

4 Joseph T. Ergastolo (SBN 137807)

5 jte@wlelaw.com

6 Andrew E. Schouten (SBN 263684)

7 aschouten@wlelaw.com

8 402 West Broadway, Suite 1800

9 San Diego, CA 92101

10 (619) 231-4844; Fax: (619) 231-6710

11 Mark Sommers (*pro hac vice*)

12 mark.sommers@finnegan.com

13 Naresh Kilaru (*pro hac vice*)

14 naresh.kilaru@finnegan.com

15 FINNEGAN, HENDERSON, FARABOW,

16 GARRETT & DUNNER, LLP

17 901 New York Avenue, N.W.

18 Washington, D.C. 20001-4413

19 Tel.: (202) 408-4000; Fax: (202) 408-4400

20 Morgan E. Smith (SBN 293503)

21 morgan.smith@finnegan.com

22 FINNEGAN, HENDERSON, FARABOW,

23 GARRETT & DUNNER, LLP

24 3300 Hillview Avenue

25 Palo Alto, CA 94304

26 Tel.: (650) 849-6600; Fax: (650) 849-6666

27 Attorneys for Plaintiffs LG Corporation,

28 LG Electronics Inc., and LG Electronics

MobileComm U.S.A., Inc.

21 **UNITED STATES DISTRICT COURT**
22 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

23 LG CORPORATION, et al.,
24 Plaintiffs,

25 v.

26 HUANG XIAOWEN DBA TOP-
27 UUSHOP, et al.,

28 Defendants.

Case No. 3:16-cv-1162-JLS-NLS

PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT
OF THEIR MOTION FOR
ATTORNEYS' FEES

1 Pursuant to the Court’s Order (Dkt. 145), Plaintiffs LG Corporation, LG
 2 Electronics, Inc., and LG Electronics MobileComm U.S.A., Inc. (collectively,
 3 “Plaintiffs” or “LG”) submit the following supplemental arguments regarding the
 4 reasonableness of their attorneys’ fees in this District.

5 “Generally, when determining a reasonable hourly rate, the relevant community
 6 is the forum in which the district court sits.” *Camaco v. Bridgeport Fin., Inc.*, 523
 7 F.3d 973, 979 (9th Cir. 2008). Rate determinations in other cases, among other
 8 things, evidence the prevailing market rate. *United Steelworkers of Am. v. Phelps*
 9 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Courts in this District and elsewhere
 10 also rely on industry surveys when determining the reasonable hourly rate. *See, e.g.*,
 11 *Flowrider Surf, Ltd. v. Pac. Surf Designs, Inc.*, No. 15-cv-1879-BEN (BLM), 2017
 12 WL 2212029, at *3 (S.D. Cal. May 18, 2017) (relying on the 2016 Real Rate Report).
 13 And, while based on the Washington, D.C. legal market, courts in this District have
 14 also relied on the Laffey Matrix (in addition to other local evidence) to support
 15 attorneys’ fee awards. *See, e.g.*, *Reed v. 1-800 Contacts, Inc.*, No. 12-cv-02359-JM
 16 (BGS), 2014 WL 29011, at *9 (S.D. Cal. Jan. 2, 2014) (finding that the Laffey Matrix
 17 “lends . . . further credibility” to counsel’s hourly rates); *Long v. Stanley Black &*
 18 *Decker, Inc.*, No. 14-cv-1246-JLS (BGS), 2015 WL 1874650, at *5 (S.D. Cal. Apr.
 19 23, 2015) (Sammartino, J.) (this Court finding the Laffey Matrix “persuasive” even
 20 though it “does not address *this community* specifically”) (emphasis in original).

21 As detailed in LG’s original motion, when factoring in LG’s fee arrangement
 22 with its counsel, Finnegan attorneys effectively billed between \$114.40 and \$783.20
 23 per hour. These rates are commensurate with other attorneys’ fee awards in this
 24 District and with the prevailing market rates for intellectual property attorneys in San
 25 Diego, California. According to the AIPLA 2015 Report of the Economic Survey (the
 26 “AIPLA Survey”), the hourly rate for intellectual property partners with 25-34 years
 27
 28

1 of experience ranges from \$331 (10th percentile) to \$870 (90th percentile).¹ (AIPLA
 2 Survey, p. I-25.)² For intellectual property partners with 15-24 years of experience,
 3 billing rates range from \$300 (10th percentile) to \$692 (90th percentile). (*Id.*)
 4 According to the 2016 Real Rate Report, the median billing rates in 2015 for
 5 intellectual property partners in San Diego was \$585.04-\$727.50. *See Flowrider Surf*,
 6 2017 WL 2212029, at *3.

7 Here, Finnegan partners billed between \$647 and \$783, for an average of \$695.
 8 Courts in this District have found comparable, and higher, rates reasonable. In a
 9 recent patent case, the court approved billing rates of \$850-\$895 for lead counsel, a
 10 partner with over twenty-five years of intellectual property litigation experience, and
 11 \$725 for a partner with approximately fifteen years experience. *Zest IP Holdings*,
 12 *LLC v. Implant Direct Mfg., LLC*, No. 10-cv-0541-GPC (WVG), 2014 WL 6851612,
 13 at *5-6 (S.D. Cal. Dec. 3, 2014); *see also Zest*, No. 10-cv-0541-GPC (WVG), Dkt.
 14 325-1 (Decl. of Lisa Ferri detailing the experience level of the attorneys involved in
 15 the fee request). The partner rates found reasonable in *Zest* are comparable to
 16 Finnegan's rate of \$850-\$890 for its lead counsel, Mark Sommers, and \$735-\$800 for
 17 Elizabeth Ferrill, Naresh Kilaru, and Ningling Wang—all partners with similar
 18 experience to those in *Zest*. (*See* Decl. of Mark Sommers ("Sommers Decl."), Dkt.
 19 136-2, ¶¶ 3-4, 6-7.) When factoring in LG's fee arrangement, Finnegan's partner rates
 20 of \$647-\$783 are lower than those previously approved in *Zest*. Finnegan's average
 21 partner rate (\$695) is also significantly lower than the \$775 average found reasonable
 22 in *Zest*. 2014 WL 6851612, at *6.

23 _____
 24 ¹ While this is the most recent version of the report available to date, it is based on
 25 data from 2014 and thus does not account for rate increases over the past two years or
 general inflation.

26 ² LG has not submitted a copy of the survey with this filing due to the dissemination
 27 restrictions placed on the read-only copy available for download by AIPLA members
 28 at [http://www.aipla.org/learningcenter/library/books/econsurvey/2015Economic
 Survey/Pages/default.aspx](http://www.aipla.org/learningcenter/library/books/econsurvey/2015EconomicSurvey/Pages/default.aspx).

1 Finnegan's effective partner billing rates are also within the median range of
 2 billing rates in 2015 for intellectual property partners in San Diego (\$585.04-
 3 \$727.50). *See Flowrider Surf*, 2017 WL 2212029, at *3. Only Mr. Sommers' rate
 4 falls outside this range. Mr. Sommers' rate of \$783 is nevertheless reasonable, as it is
 5 within the range of rates charged by intellectual property partners of similar
 6 experience (\$331-\$870) and significantly less than the lead counsel rate previously
 7 approved in *Zest*. *See* 2014 WL 6851612, at *5; AIPLA Survey, p. I-25. Given
 8 Finnegan's position as a leading firm for intellectual property litigation, and Mr.
 9 Sommers' expertise in this area, his rate of \$783 is reasonable.

10 As for associates, the AIPLA Survey notes that the hourly rates for associates
 11 with fewer than five years experience range from \$186 (10th percentile) to \$419 (90th
 12 percentile). (AIPLA Survey, p. I-36.) For associates with five to six years of
 13 experience, billing rates range from \$228 (10th percentile) to \$537 (90th percentile).
 14 (*Id.*) According to the 2016 Real Rate Report, the median billing rate in 2015 for
 15 intellectual property associates in San Diego was \$413.80. *See Flowrider Surf*, 2017
 16 WL 2212029, at *3.

17 Here, Finnegan associates billed between \$370 and \$488, for an average of
 18 \$415. These rates are similar to rates previously found reasonable in this District. For
 19 example, the court in *Zest* approved billing rates of \$565 for an associate with four to
 20 five years experience and \$360-\$420 for an associate with two to three years
 21 experience. 2014 WL 6851612, at *5-6 (S.D. Cal. Dec. 3, 2014); *see also Zest*, No.
 22 10-cv-0541-GPC (WVG), Dkt. 325-1 (Decl. of Lisa Ferri detailing the experience
 23 level of the attorneys involved in the fee request). The associate rates found
 24 reasonable in *Zest* are comparable to Finnegan's rates of \$555 for Samuel Eichner
 25 (five years experience), \$505 for Ms. Smith (four years experience), \$460 Ms. Atkins
 26 (three years experience), \$420 Ms. Bulger (two years experience), and \$420 Ms.
 27 English (one year experience). (Sommers Decl., Dkt. 136-2, ¶¶ 5, 8-10.) When
 28 factoring in LG's fee arrangement, Finnegan's associate rates of \$370-\$488 are lower

than those previously approved in *Zest*. Finnegan's average associate rate (\$415) is also significantly lower than the \$543 average found reasonable in *Zest*. 2014 WL 6851612, at *6.

Finnegan's \$415 average associate billing rate is also within \$1 of the median billing rate in 2015 for intellectual property associates in San Diego (\$413.80). *See Flowrider Surf*, 2017 WL 2212029, at *3. Ms. Atkins', Ms. English's, Ms. Bulger's, and Mr. Eichner's rates are also within the range of rates charged by intellectual property attorneys with similar experience. (*See* AIPLA Survey, p. I-36 (rates for intellectual property associates with fewer than five years experience range from \$186-\$419, rates for associates with five to six years experience range from \$288 to \$537).) Only Ms. Smith's rate falls outside the AIPLA Survey range. Her rate of \$444 is nevertheless reasonable, as it is significantly less than the \$565 rate approved in *Zest* for a similarly experienced associate. *See* 2014 WL 6851612, at *5-6; *see also Zest*, No. 10-CV-0541-GPC WVG, Dkt. 325-1 (Decl. of Lisa Ferri detailing the experience level of the attorneys involved in the fee request). The chart below lists each attorney's experience level and billing rate (accounting for LG's fee agreement) and compares these rates to the AIPLA Survey, the 2016 Real Rate Report, and rates previously found reasonable in this District:

Name Experience Rate	AIPLA Survey (10th -90th percentile)	2016 Real Rate Report	Rates Found Reasonable in S.D. Cal.
Mark Sommers Partner, 34 years \$783	\$331-\$870	\$585.04-\$727.50	<i>Zest</i> : \$850-\$895 for lead counsel, Lisa Ferri; \$775 partner average
Ningling Wang Partner, 16 years \$704	\$300-\$692	\$585.04-\$727.50	<i>Zest</i> : \$725 for partner Brian Nolan; \$775 partner average
Naresh Kilaru Partner, 15 years \$647	\$300-\$692	\$585.04-\$727.50	<i>Zest</i> : \$725 for partner Brian Nolan; \$775 partner average

Name Experience Rate	AIPLA Survey (10th -90th percentile)	2016 Real Rate Report	Rates Found Reasonable in S.D. Cal.
Elizabeth Ferrill Partner, 10 years \$647	\$288-\$500	\$585.04-\$727.50	<i>Zest</i> : \$725 for partner Brian Nolan and counsel John Molenda; \$775 partner average
Samuel Eichner Associate, 5 years \$488	\$288-\$537	\$413.80	<i>Zest</i> : \$565 for associate Neil DuChez with 4-5 years experience; \$543 associate average
Morgan Smith Associate, 4 years \$444	\$186-\$419	\$413.80	<i>Zest</i> : \$565 for associate Neil DuChez with 4-5 years experience, \$420 for associate Megan Levine with 2-3 years experience; \$543 associate average
Eleanor Atkins Associate, 3 years \$405	\$186-\$419	\$413.80	<i>Zest</i> : \$420 for associate Megan Levine with 2-3 years experience; \$543 associate average
Danielle Bulger Associate, 2 years \$370	\$186-\$419	\$413.80	<i>Zest</i> : \$360-420 for associate Megan Levine with 2-3 years experience; \$543 associate average
Sydney English Associate, 1 year \$370	\$186-\$419	\$413.80	<i>Zest</i> : \$360-420 for associate Megan Levine with 2-3 years experience; \$543 associate average

Two law-student summer associates, Nate Ngerebara and Patrick Rodgers, also billed time on this case. Their work was billed at \$130 and \$210 per hour, respectively (\$114 and \$185 after accounting for LG's fee arrangement). (Sommers

Decl., ¶ 11, Ex. 4.) While LG has not been able to locate surveys reflecting the rates at which firms similar to Finnegan bill out summer associate work, LG submits that these rates are reasonable when taking into account Finnegan's first-year rates (\$370 per hour per LG's fee agreement), Mr. Ngerebara's and Mr. Rodgers' level of experience (law students), and the work they performed (legal research). Given their limited role, Mr. Ngerebara and Mr. Rodgers collectively billed 16.7 hours to this case and only account for \$2,297.68 of LG's total fee request. (*See* Sommers Decl., Ex. 4.) Taking the above into account, the rates for Mr. Ngerebara and Mr. Rodgers are reasonable.

In this District, paralegal rates between \$125 and \$175 are generally approved and have been approved as high as \$290. *In re Maxwell Techs., Inc., Derivative Litig.*, No. 13-cv-966-BEN (RBB), 2015 WL 12791166, at *5 (S.D. Cal. July 13, 2015) (awarding \$225 paralegal rate to paralegals with "significant experience"); *Brighton Collectibles, Inc. v. Coldwater Creek Inc.*, No. 06-cv-01848-H (POR), 2009 WL 160235, at *4 (S.D. Cal. Jan. 20, 2009) (concluding that \$90 to \$210 per hour was reasonable for paralegal work in a copyright infringement action); *Flowrider Surf*, 2017 WL 2212029, at *3 (awarding paralegal fees of \$150 per hour in a patent infringement case). Here, Finnegan paralegals effectively billed between \$184.80 and \$308 per hour, when accounting for LG's fee agreement. In light of the prevailing rates in this District, LG is willing to reduce the hourly rate for most of its paralegals (Bradley Moore, Camille Joyner, Gail Selburn, Jan Priefer, Lan Liu, Mary Petite, Travis Smith, and Takisha Diaz) to \$175 per hour. A rate of \$175 is reasonable for these individuals because Finnegan's paralegals have significant experience in their respective positions, in most cases over ten years. (*See* Sommers Decl., ¶¶ 12-16.) This rate is also commensurate with, or less than, other awards in this District. *See Maxwell Techs.*, 2015 WL 12791166, at *5; *Brighton Collectibles*, 2009 WL 160235, at *4. A rate of \$225 is reasonable for Bonita Ford and Randal Holderfield, both of whom have been paralegals for over twenty years. (*See* Sommers Decl., ¶¶ 12, 15.)

1 This District has previously approved a \$225 rate for paralegals with “significant
2 experience.” *Maxwell Techs.*, 2015 WL 12791166, at *5. Adjusting these hourly
3 rates reduces LG’s total fee request as follows: \$13,634.34 from Category 1; \$17.64
4 from Category 2; \$8,175.14 from Category 3; and \$482.22 from Category 4, for a
5 total of \$22,309.34.

6 For the above reasons, together with the reasons stated in its original motion,
7 LG respectfully requests that the Court grant its motion for attorneys’ fees.

8
9 Respectfully submitted,

10 Dated: July 3, 2017

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

11
12 and

13 WRIGHT, L’ESTRANGE & ERGASTOLO

14 Attorneys for Plaintiffs LG Corporation,
15 LG Electronics, Inc., and LG
16 Electronics MobileComm U.S.A., Inc.

17 By: s/ Morgan E. Smith
Morgan E. Smith
18 morgan.smith@finnegan.com